



# NEWS

Judicial Council of California  
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## **SUMMARY OF CASES ACCEPTED DURING THE WEEK OF APRIL 15, 2002**

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#02-65 People v. Hammer, S104303. (D037349; 94 Cal.App.4th 1443.)

Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. This court limited review to the following issue: Did defendant's prior conviction for committing a lewd act with a child in violation of Penal Code section 288, subdivision (a), qualify him for sentencing under the "one strike" law (Pen. Code, § 667.61) although he successfully completed probation on that prior conviction? (See Pen. Code, § 667.61, subd. (c)(7).)

#02-66 People v. Toney, S104995. (C035564; 95 Cal.App.4th 941.) Petition for review after the Court of Appeal affirmed an order dismissing a criminal proceeding. This case presents the following issue: If the magistrate at a preliminary examination grants a defendant's second motion to suppress evidence (Pen. Code, § 1538.5) and dismisses a second criminal complaint for insufficient evidence (Pen. Code, § 871), may the People move to reinstate the complaint (Pen. Code, § 871.5) or is such a motion barred by the "two dismissal" rule of Penal Code section 1538.5, subdivision (p), and/or section 1387?

(over)

## **DISPOSITIONS**

#00-156 Kerrigan v. Thrifty Drug, S091951, was transferred to the Court of Appeal for reconsideration in light of Ortega v Kmart Corporation (2002) 26 Cal.4th 1200.

The following cases were dismissed and remanded to the Court of Appeal:

#01-69 People v. Benitez, S096868.

#01-26 Walmart, Inc. v. Progressive Campaigns, Inc., S094236.

#01-101 Young v. Raley's, Inc., S098428.

## **STATUS**

#01-126 People v. Superior Court (Jimenez), S099542. The court ordered the issues on review expanded to include the following issue: Did defendant properly file in the superior court rather than the Court of Appeal his petition for writ of mandate contesting the People's peremptory challenge to the magistrate assigned to hear his motion to suppress evidence.